

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1130923-D2 AND
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: John H. CESSFORD

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1920

John H. CESSFORD

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 9 November 1970, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman's documents for eight months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as a deck utility on board the SS JEAN LYKES under authority of the document above captioned, Appellant:

- (1) on or about 3 July 1969, did wrongfully have intoxicants in his possession while the vessel was at Baton Rouge, Louisiana; and
- (2) on or about 5 July 1969, did wrongfully fail to perform his assigned duties while the vessel was at New Orleans, Louisiana;

and while serving as an Able Bodied Seaman on board the SS EAGLE TRANSPORTER under authority of his duly issued document, Appellant:

- (3) on or about 5 September 1968, did wrongfully fail to join said vessel at Sattahip, Thailand;
- (4) on or about 17 September 1968, did wrongfully fail to perform his assigned duties while the vessel was at Bahrain; and
- (5) on or about 9 October 1968, did wrongfully fail to join said vessel at Sattahip, Thailand.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence excerpts from

the shipping articles and official logs of the SS JEAN LYKES and the SS EAGLE TRANSPORTER.

In defense, Appellant offered in evidence three letters from defense counsel and two medical reports.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and all five specifications had been proved. He then served a written order on Appellant suspending all documents issued to him for a period of eight months outright.

The entire decision was served on 12 July 1971. Appeal was timely filed on 16 July 1971.

FINDINGS OF FACT

On 3 and 5 July 1969, Appellant was serving as a deck utility on board the SS JEAN LYKES and acting under authority of his document while the ship was in the ports of Baton Rouge and New Orleans, La., respectively.

On 3 July 1969, Appellant was apprehended in possession of a partially consumed bottle of whiskey. He was later found, "apparently intoxicated," in his bunk by the Boatswain and the Chief Mate. On 5 July 1969, Appellant failed to report for a shift of the vessel at 1700 as announced and ordered on the Sailing Board.

From 5 September through 9 October 1968, Appellant was serving as Able Seaman on board SS EAGLE TRANSPORTER and acting under authority of his document. While the ship was in Sattahip, Thailand, on 5 September 1968, Appellant failed to join on sailing. On 17 September 1968, while the vessel was at Bahrain, Appellant failed to stand his assigned watch and to turn to for undocking and securing for sea. On 9 October 1968, while the vessel was in Sattahip, Thailand, Appellant again failed to join on sailing.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) the specifications alleging misconduct during 1968 aboard the SS EAGLE TRANSPORTER should have been included in the charge tried at a hearing which resulted in a 15 November 1968 order of nine months' suspension;
- (2) the finding of failure to perform on 5 July 1969 is

erroneous because a Deck Utility is a day worker;

- (3) failure to name the Boatswain, mentioned by the 3 July 1969 log entry as having found Appellant in his bunk, amounted to a denial of the opportunity to confront one's adversary; and
- (4) the period during which Appellant's document was in the hands of an attorney, Phillip Bordages, should be deducted from the suspension period.

APPEARANCE: Appellant, pro se.

OPINION

There is no need to discuss the first basis for appeal. Suffice it to say that such an issue is properly raised at the hearing at which time the Administrative Law Judge can explore and seek an explanation of the matter. Where, as in this case, the Administrative Law Judge has had no such opportunity, the issue will not be considered on appeal. See Commandant Appeal Decision No. 1840. It must be noted that Appellant was represented by counsel at the hearing.

For two reasons, there is no merit to Appellant's second contention. First, it is customarily the duty of a deck utility to turn to during a shift of the vessel, regardless of his usual working hours. Second, an order of the Master must be obeyed regardless of the man's normal working hours. If Appellant felt aggrieved by the order, his remedy lay with his union, not with failure to perform.

There was no prejudicial error involved with the anonymity of the Boatswain. That Appellant was found in his bunk after he had been presented to the Master for possession of whiskey was certainly not necessary to the finding of wrongful possession. Furthermore, Appellant could have, but did not, object to the log entry at the time that it was read to him or at the hearing.

Since a suspension period runs only when the document is in Coast Guard possession, Appellant's fourth contention is by way of a petition for clemency. There appears no ground for the granting of such clemency in this case, particularly in view of Appellant's prior record demonstrating his penchant for misconduct. It is noted, however, that the Administrative Law Judge apparently failed to allow Appellant the opportunity to present argument concerning his prior record, although he had advised Appellant that the record would be accepted in open hearing.

CONCLUSION

It is concluded that this flaw can be corrected by reducing the period of suspension ordered.

ORDER

The findings of the Administrative Law Judge dated at New Orleans, La., on 9 November 1970, are AFFIRMED, and the order is modified to a suspension of six months' duration.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 5th day of April 1973.

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